

the erroneous assumption that a hazardous material is present or involved, even if the duration of the evacuation exceeds one hour.

A number of commenters objected to the requirement that the Department be given immediate notification of incidents involving evacuations where there is no release or spill of a hazardous material. The basis for this objection is summarized by one commenter who noted that:

* * * local officials often order evacuations when no threat of physical injury or property damage exists. Evacuations are frequently ordered out of an abundance of caution. For example, an evacuation is usually ordered when a train derails containing hazardous materials, even if no hazardous material is released as a result of the derailment. The decision to evacuate, while understandable from the perspective of local officials, is not sufficiently related to safety issues to require carriers to satisfy the notification requirement contained in the proposed rule, § 171.15(a)(6).

RSPA does not agree with this line of reasoning. The Department's need to be immediately informed of certain types of evacuations does not depend on whether, in hindsight, a particular decision to evacuate an area was disproportionate to the actual risks involved in an incident. As pointed out in the Department's Emergency Response Guidebook (Guidebook for Initial Response to Hazard Materials Incidents, DOT P 5800.4), an "evacuation is, by itself, a process of significant risk for the persons being evacuated." The risk associated with a hazardous materials incident is directly related to the probability of the release or spill of the material and the number of people exposed to the release or spill. When a tank car or a cargo tank truck overturns, the probability of a release of the hazardous material is certainly greater than otherwise, and the risk associated with such events can be reduced if the number of people exposed to the potential release of the material is also reduced (i.e., by means of an evacuation). Finally, RSPA finds no merit in the argument that evacuations are never warranted unless there has been an actual release of a hazardous material. A tank car carrying a flammable gas can for a time be engulfed by fire and still not leak; but certainly an evacuation would be appropriate in such a situation. Therefore, RSPA cannot accept the suggestion that the reporting requirement for evacuations be limited only to instances in which there has been an actual release of the hazardous material.

The NPRM proposed to amend § 171.15 to require the immediate notification of the Department for all incidents involving the closure or shutdown of one or more major transportation arteries or facilities for one hour or more. The phrase "major transportation arteries or facilities" includes, at the minimum, segments of interstate highways; bridges or tunnels providing access to interstate highways; airports where scheduled passenger operations are conducted; commercially navigable waterways; and railroad mainline track. Several commenters opposed this reporting criterion on the grounds that it is unduly broad and unnecessary from a safety standpoint, especially if no release or spill of a hazardous materials occurs. RSPA believes that there are significant safety concerns involved in decisions to shut down or close major transportation arteries and facilities that are the direct result of hazardous materials. Some of the more obvious safety concerns involved with the shut down or closure of major transportation arteries and facilities are: The prevention of the general public from entering the area affected by the incident; diversions and delays in the routing of other hazardous materials; and the fact that incidents that result in the shut down of major transportation arteries or facilities are, by their very nature, more severe and entail greater public safety concerns than incidents that do not result in such disruptions. These safety concerns are not definable solely in terms of whether or not there has been a release of hazardous materials. Even for incidents involving fatalities or injuries it is not necessarily the case that such incidents entail the involuntary release of the hazardous material from its container. People have been killed or injured while cleaning tanks that contained hazardous materials or by opening domes or manholes of cargo tanks and tank cars containing hazardous materials. These are incidents that may not entail the unintentional release of the hazardous material.

One commenter objected to the reporting criterion on the grounds that it would require "a rail carrier to immediately report practically every derailment because a rail line is often closed for more than an hour when a train derails." This objection is apparently based on a misreading of § 171.15(a). While it is true that derailments almost always result in rail lines being closed for more than an hour solely because of the safety concerns and mechanical problems involved with clearing the track, it is not always the case that rail lines are closed "as the

direct result of hazardous materials". If a rail line is closed as the direct result of hazardous materials for less than an hour, then carriers are not required to immediately notify the Department even if hazardous materials are present, unless other reporting criteria require such notification.

The NPRM had proposed to amend § 171.15 to require the immediate notification of the Department for all incidents involving deviation of an aircraft from its planned course or its scheduled landing. The only comment received on this reporting criterion pointed out that the criterion should also pertain to flights that are terminated before take-off (i.e., a turnaround) due to hazardous materials, and to certain other events, such as flights declaring an emergency due to hazardous materials, even though a flight did not deviate from its planned route, or entail an unscheduled landing. RSPA agrees, and has changed this reporting requirement to pertain to all incidents in which as a direct result of hazardous materials, the operational flight pattern or routine of an aircraft is altered.

In reviewing the comments received in response to the proposed changes to § 171.15 (and § 175.45), RSPA believes the distinction should be clarified between incidents in which something happens as a direct result of hazardous materials (e.g., a death caused by exposure to a hazardous materials) and two other types of incidents. These are incidents in which either something happens to the hazardous material itself such as its being spilled or something occurs in the presence of the hazardous material such as the occurrence of a fire.

Concerning the occurrence of fires and the presence of radioactive materials, § 171.15(a)(4) as presently worded requires the immediate notification of the Department for "each incident * * * in which as a direct result of hazardous materials: * * * fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material." In the case of fires this reporting requirement can be incorrectly interpreted as applying only to instances in which a hazardous material (which may not be a radioactive material) has caused a fire, i.e., the fire is a direct result of a hazardous material. The Department must be immediately notified regardless of whether or not the fire, or breakage, or spillage, or suspected radioactive contamination is the direct result of a hazardous material. In light of these considerations, which also apply to incidents involving etiologic agents, § 171.15 has been